

UNITED STATES DISTRICT COURT

for the
Eastern District of North Carolina

In the Matter of the Search of
*(Briefly describe the property to be searched
 or identify the person by name and address)*

INFORMATION ASSOCIATED WITH
 EBAY ACCOUNT seller2244843 STORED AT
 PREMISES CONTROLLED BY EBAY, INC.

Case No. 5:18-MJ-1050-RN

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property *(identify the person or describe the property to be searched and give its location)*:

see Attachment A

located in the Eastern District of North Carolina, there is now concealed *(identify the person or describe the property to be seized)*:

see Attachment B

The basis for the search under Fed. R. Crim. P. 41(c) is *(check one or more)*:

- ☒ evidence of a crime;
- ☐ contraband, fruits of crime, or other items illegally possessed;
- ☐ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section
 18 USC 641

Offense Description
 Unlawful sale of government property

The application is based on these facts:

See attached Affidavit of Joseph Duracinsky


- ☒ Continued on the attached sheet.
- ☐ Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.


Applicant's signature

Joseph Duracinsky, Special Agent, DCIS
Printed name and title

Pursuant to Rule 4.1 of the Federal Rules of Criminal Procedure, the applicant appeared before me via reliable electronic means and was placed under oath.

Date: 1/18/2018 3:17 pm


Judge's signature

City and state: Raleigh, North Carolina

Robert T. Numbers II, United States Magistrate Judge
Printed name and title

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. _____

IN THE MATTER OF THE SEARCH
OF EBAY ACCOUNT: **seller2244843**
THAT ARE STORED AT PREMISES
CONTROLLED BY EBAY, INC.

AFFIDAVIT
IN SUPPORT OF AN APPLICATION
FOR A SEARCH WARRANT

I, **Special Agent Joseph M. Duracinsky**, being first duly sworn,
hereby depose and state as follows:

I. INTRODUCTION

1. I am a Special Agent (SA) with the Defense Criminal Investigative Service (DCIS) and have been so employed since July 2016. Prior to this, I was a SA with the United States Secret Service (USSS) from November 2008 to July 2016. DCIS is the investigative arm of the Department of Defense (DoD), Office of Inspector General (OIG). I am currently assigned to the DCIS Raleigh Resident Agency, Raleigh, North Carolina. My duties and responsibilities as a DCIS agent are to investigate a number of criminal matters, to include contract fraud, wire fraud, false claims, theft of Government property, computer-related crimes, and other frauds against the DoD. I received investigative training

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at the Federal Law Enforcement Training Center, Glynco, Georgia, and at the USSS Rowley Training Center, Laurel, Maryland.

2. The information contained in this affidavit has been obtained from various sources. These sources include, but are not limited to, my training and experience, personal observations, participation in the federal investigation described herein, conversations with law enforcement officers and others with knowledge of the investigation, and the review of records obtained during this investigation. This affidavit is submitted for the limited purpose of obtaining a search warrant. It should not be construed to contain all facts known to me and other investigating agencies regarding the matter under investigation.

3. Your Affiant provides the following information as probable cause to believe that evidence of criminal conduct in relation to **18 U.S.C. § 641** (*Theft of Government Property*) will be found within the eBay User Identification (User ID) **"seller2244843"** account used by Staff Sergeant Kevin Penland (**PENLAND**).¹ This account is stored at premises owned, maintained,

¹ 18 U.S.C. § 641 criminalizes the act in which one embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any...thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof..."

controlled, or operated by eBay Inc., headquartered at 2025 Hamilton Avenue, San Jose, CA 95125. Description of the account is further provided in Attachment A. Item(s) to be seized are further described in Attachment B.

4. This affidavit is made in support of an application for a search warrant under 18 U.S.C. §§ 2703(a), 2703(b)(1)(A), and 2703(c)(1)(A) to require eBay to disclose to the Government records and other information (including the content of communications) in its possession pertaining to the subscriber or customer associated with eBay User ID "seller 2244843."

5. This Court has jurisdiction to issue the requested warrant because it is "a court of competent jurisdiction" as defined by 18 U.S.C. § 2711 and referenced in 18 U.S.C. §§ 2703(a), (b)(1)(A), and (c)(1)(A). Specifically, the United States District Court for the Eastern District of North Carolina is "a district court of the United States . . . that - has jurisdiction over the offense being investigated." (18 U.S.C. § 2711(3)(A)(i))

II. PROBABLE CAUSE

6. Staff Sergeant Kevin Penland (PENLAND) was assigned as a supply sergeant for Headquarters and Headquarters Battery (HHB), 3-319th Airborne Field Artillery Regiment (AFAR), 1st Brigade Combat Team (1BCT), 82nd Airborne Division, at Fort Bragg, North Carolina, from approximately August 2013 to August 2016. PENLAND then remained assigned to HHB, 3-319th AFAR after August 2016, but he no longer served as the unit's supply sergeant. PENLAND has been in the U.S. Army for over 10 years, and his Military Occupational Specialty is 92Y, Unit Supply.

7. As a battery supply sergeant, PENLAND was responsible for the request, receipt, issue, and accountability of individual, organizational, installation, and expendable supplies and equipment for his unit. His duty description also included, among other things, scheduling and performing preventive and organizational maintenance on weapons and other sensitive items.

8. In or around August 2016, an investigation was initiated on PENLAND, and others known and unknown, after a review of records revealed deposits and withdrawals from a bank account held by PENLAND totaling in excess of \$220,000 from August 2015 to January 2016. The deposit activity into PENLAND's account included

multiple wire transfers from a bank account held by American Electro Optics, LLC (AEO), and a bank account held by an individual named Dongmei Xie (XIE). AEO was identified as a company from Fort Worth, Texas that buys, sells, trades, and repairs night vision and thermal optic devices. An individual named Morris Rodgers (RODGERS) is the President and General Manager of AEO. XIE is RODGERS' spouse.

9. In his assignment as a battery supply sergeant, Penland had access to sensitive military items such as night vision and thermal optic devices.

10. A review of records obtained during the investigation revealed that from August 2015 to January 2016, PENLAND received six wire transfers totaling approximately \$82,475 into his USAA Federal Savings Bank account from an AEO bank account at Frost Bank.

11. A review of records obtained during the investigation revealed that during September 2015, PENLAND received three wire transfers totaling approximately \$60,035 into his USAA Federal Savings Bank account from XIE's bank account at Hanmi Bank.

12. A review of records obtained during the investigation revealed that from March 2016 to May 2016, PENLAND received two wire transfers totaling approximately \$49,550 into his Navy Federal Credit Union account from an AEO bank account at Frost Bank.

13. In summary, PENLAND received wire transfers totaling \$192,060 from AEO and XIE between August 2015 and May 2016.

14. Records from eBay have revealed that Kevin PENLAND registered with eBay using e-mail account "kevin22442244@gmail.com" and associated with with eBay User ID "seller2244843." These records displayed sales of image intensifier assemblies² taking place in 2015 and 2016. Some of these sales were ultimately reversed or refunded, but as set forth below - others appear to have been sold as intended. Additionally, the records showed that when this eBay account was originally opened/registered on or about July 30, 2015, the original User ID was "kevipenla." The User ID was then changed to "seller2244843" on or about August 24, 2015.

² A component of night vision devices that increases the intensity of available light in an optical system to allow use under low-light conditions.

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15. Sales history on this eBay account showed that in August and September 2016, approximately five image intensifier tubes/assemblies, were sold by "seller2244843" to other eBay users.

16. A review of records obtained from PayPal identified a PayPal account registered to Kevin PENLAND with e-mail account "kevin22442244@gmail.com." Proceeds from PENLAND's eBay sales were deposited into this PayPal account, and then ultimately withdrawn and deposited into PENLAND's USAA Federal Saving Bank account. The "total amount received" into the PayPal account was listed as \$8,609.71. Approximately \$6,558.76 was withdrawn from the PayPal account and deposited into PENLAND's USAA Federal Savings Bank account between September 2015 and October 2016.

17. Photos of four of the five image intensifier assemblies sold by "seller2244843" / PENLAND in August and September 2016 were obtained from the eBay website. Using markings visible on the photos of the image intensifier assemblies, the manufacturers of the items were identified. Representatives from the manufacturers were then contacted. They confirmed that these image intensifier assemblies were all originally manufactured for U.S. Government contracts and shipped under the orders of U.S.

Government contracts, specifically, DoD contracts. Such image intensifier assemblies acquired by the DoD are made to military specifications and are sensitive defense-related items. They are not available for sale or use by the public and require "demilitarization" and disposal in accordance with DoD policies. Based on my knowledge, training, and experience, these image intensifier assemblies were not lawfully sold over eBay for personal gain.

18. In December 2016, PENLAND was interviewed. PENLAND admitted to selling approximately five image intensifier assemblies through eBay. He claimed they were "trash" and were supposed to be "thrown away" by him upon the turn-in of several night vision devices at Fort Bragg. He kept some of the image intensifier assemblies and later advertised them for sale via eBay. PENLAND claimed he did not know selling the image intensifier assemblies was illegal. PENLAND did not provide information regarding the financial transactions with AEO and XIE. He said he buys and sells cars, but he was unclear as to whether or not this business related to the wire transfers from AEO and XIE. He denied knowing RODGERS, XIE, and AEO, but he mentioned the name "Mo" as someone he did business with in the past.

19. In March 2017, a search warrant for PENLAND's e-mail account, "kevin22442244@gmail.com," was obtained from the United States District Court for the Eastern District of North Carolina, signed by Magistrate Judge James E. Gates. This search warrant was subsequently served to Google. Records obtained from Google pursuant to the search warrant contained, among other things, e-mails related to the image intensifier assemblies advertised for sale/auction on eBay by PENLAND using eBay User ID "seller2244843." Several e-mails included communications related to the image intensifier assemblies between "seller2244843" and other eBay users.

20. In June 2017, records were obtained from AEO, including copies of communications between PENLAND and RODGERS/AEO, wire transfer records, and business accounting records detailing the items AEO purchased from PENLAND and the payments AEO made to PENLAND. In summary, AEO purchased approximately 306 image intensifier assemblies directly from PENLAND, among a few other items, from August 2015 to May 2016.

21. Some of the communications provided by AEO were eBay messages between eBay User ID "kevipenla" (PENLAND) and eBay User ID "aeoptics" (AEO). These messages show that PENLAND established

contact with RODGERS/AEO via eBay. (In the following communications, a "10130d" is an image intensifier assembly/tube for a PVS-7, a single tube night vision device with dual eyepieces.)

- a. For example, on August 14, 2015, an eBay message from "kevipenla" to "aeoptics" stated, "I am new to ebay and you seem to be very big into this market. I have some 10130d image intensifier I am trying to sell in bulk do you know someone who deals in bulk buys?"
- b. Continuing on August 14, 2015, "aeoptics" replied to "kevipenla" by stating, "I am interested. What would be the quantity and price? I assume they are very good quality. You can call 817 546 0993 to discuss. Mo Rodgers"
- c. Continuing on August 14, 2015, "kevipenla" replied to "aeoptics" by stating, "Yes good quality. I have 70 10130d. I can send whatever pictures you needs. I figure price will be based off how many bought some where are 250 each if all bought."

22. In September 2017, PENLAND absented himself from his military unit without authority, and a Wanted Person File was subsequently entered into the National Crime Information Center (NCIC) database in October 2017 for Military Desertion.

III. BACKGROUND CONCERNING EBAY

23. In general, eBay Inc. is a multinational e-commerce corporation that facilitates online consumer-to-consumer and business-to-consumer sales. The company manages ebay.com, an online auction and shopping website in which people and businesses buy and sell a variety of goods and services worldwide. According to businessdictionary.com, eBay is an online auction service used to buy and sell items. The company uses an electronic platform to facilitate millions of transactions every day. Users seeking to purchase items make bids over a specific time period and then the seller determines guidelines such as a minimum bid he/she is willing to accept. Payment is typically made electronically through PayPal and then the merchandise is shipped to the buyer.

24. According to an eBay/PayPal guide available to law enforcement, "How eBay Works" is described as follows:

- a. Item is displayed on eBay for a set period of time (often 7 days).

- b. During this time, any user can bid on the item over the Internet. The current high bid, and bid history, is constantly updated and displayed.
- c. Bidding is by proxy.
- d. Bidding is often intense.
- e. At a designated moment, the sale ends.
- f. High bidder and seller contact each other, arrange details.
- g. Often, buyer sends payment by PayPal, credit card, money order, or check to the seller. Upon receiving money, seller sends goods by mail.
- h. Buyer and seller "grade" each other on the transaction (feedback forum).

25. Customers wishing to use eBay to buy or sell items need to first establish an account via ebay.com. During account registration, the user chooses between creating a personal or business account. The user provides his/her name and e-mail address and creates a password. An eBay User ID is then generated and assigned after the submission of this information. The eBay User ID can be customized by editing profile information or account settings.

26. In account settings, the user can supply and make changes to various personal information, contact information, and financial information, as well as set preferences, set communication preferences, manage his/her PayPal account, and manage his/her seller account, among other things.

27. Regarding communication preferences, there are various ways that eBay can communicate with its users, including through e-mails, text messages, or eBay messages that are visible to the user when the user is signed/logged in to his/her eBay account. For general communication between eBay users, eBay employs a mail forwarding system where eBay forwards messages to another user's e-mail account based on a requesting user's behalf (initiated through a "Contact Member" link on the website). Replies to these messages are also routed through eBay. This way, eBay users can communicate with each other without eBay having to release personal contact information, like e-mail addresses. If an eBay user receives a message from eBay at his/her registered e-mail address, the user should also find a copy of that message within his/her eBay messages when logged in to his/her eBay account.

28. Based on the foregoing, the computers of eBay Inc. are likely to contain stored electronic communications, that is, eBay messages from eBay and other eBay users. Such information may contain evidence of the offenses under investigation, similar to e-mails from an e-mail account.

29. According to an eBay/PayPal guide available to law enforcement, the following records are among those maintained by

eBay on eBay user accounts, and these records may also contain evidence of the offenses under investigation:

- a. Registration information.
- b. Status information.
- c. Account information.
- d. Miscellaneous information.
- e. Other address information.
- f. User ID history.
- g. E-mail history.
- h. Password history.
- i. Billing history.
- j. Settlement history.
- k. Transaction history / Account activity.
- l. Auction types.

30. Included with registration information, User ID history, transaction history / account activity, and other records noted above, eBay maintains records of the Internet Protocol (IP) addresses used by its users to do things such as register their account, make changes to their User ID, and list items for sale/auction. Because every electronic device that connects to the internet must use an IP address, IP address information can help identify which computers or other devices were used to access an eBay account.

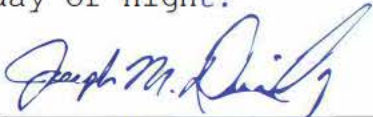
31. As explained herein, information stored in connection with an eBay account may provide crucial evidence of the "who, what, when, where, why, and how" of the conduct under

investigation. In my training and experience, registration information, IP address information, stored electronic communications, and other data maintained by eBay can indicate who has used or controlled the account. This "user attribution" evidence is analogous to the search for "indicia of occupancy" while executing a search warrant at a residence. Further, records and information maintained by eBay can show how and when an eBay account was used. For example, eBay maintains records of the IP addresses used by its users when performing certain actions along with the time and date. By determining the physical location associated with the IP addresses, investigators can understand the chronological and geographic context of the eBay account's usage relating to the offenses under investigation.

32. Therefore, the computers of eBay Inc. are likely to contain the material described above, including stored electronic communications (i.e., eBay messages from eBay and other eBay users) and other information concerning its customers or subscribers, such as account access information, transaction information, and other account information.

IV. CONCLUSION

33. Based on the above, I respectfully assert that probable cause exists to believe that PENLAND violated 18 U.S.C. § 641, Theft of Government Property, by selling a thing of value of the United States without authority. Moreover, additional evidence related to this violation is likely to be contained in PENLAND's eBay account, eBay User ID "seller2244843" (formerly "kevipenla"). For these reasons, I am requesting a search warrant of the account listed in Attachment A to seize the items listed in Attachment B. The warrant will be served on eBay, a company which will compile the requested records at a time convenient to it; therefore, it is reasonable to permit execution of this warrant at any time in the day or night.



Joseph M. Duracinsky
Special Agent
Defense Criminal Investigative Service

Pursuant to Rule 4.1 of the Federal Rules of Criminal Procedure, the affiant appeared before me via reliable electronic means, was placed under oath, and attested to the contents of this written affidavit.
Dated: January 18, 2018



Robert T. Numbers, II
United States Magistrate Judge

ATTACHMENT A

Property to Be Searched

This warrant applies to information associated with eBay User ID "seller2244843" that is stored at premises owned, maintained, controlled, or operated by eBay Inc., a company headquartered at 2025 Hamilton Avenue, San Jose, CA 95125.

ATTACHMENT B

Particular Items to be Searched and/or Seized

I. Information to be disclosed by eBay

To the extent that the information described in Attachment A is within the possession, custody, or control of eBay Inc., including any messages, records, files, logs, or information that has been deleted but is still available to eBay, eBay is required to disclose the following items and information to the Government for each account listed in Attachment A.

a. All communications and eBay messages associated with the account, including stored or preserved copies of communications sent to and from the account from eBay and other eBay users. This item includes the content of all communications; the source and destination addresses, eBay User IDs, or similar information associated with each communication; the date and time (including time zone) at which each communication was sent or received; the size and length of each communication; and any other data associated with each communication.

b. All registration information.

c. All status information.

d. All account information.

e. All miscellaneous information.

f. All other address information.

g. All User ID history.

h. All e-mail history.

i. All password history

j. All billing history.

k. All settlement history.

l. All transaction history / account activity.

m. All auction type information.

n. All available IP address information along with dates and times.

II. Information to be searched/seized by the Government

All information described above in Section I that constitutes 1) evidence of violations of 18 U.S.C. § 641 ("subject violation"), or 2) Any item constituting contraband due to the subject violation, fruits of the subject violation, or other items possessed whose possession is illegal due to the subject violation; or 3) Any property designed for use, intended for use, or used in committing any subject violation.

Subject to this restriction, the information that the Government may seize includes, without limitation, information pertaining to the following:

a. Engaging in the unlawful theft and sale of Government property and/or engaging in conduct meant to intentionally conceal such violations.

b. Evidence indicating how and when the eBay account was accessed or used, to determine the geographic and chronological context of account access, use, and events relating to the offenses under investigation and to the eBay account owner/user.

c. Evidence indicating the eBay account owner/user's state of mind as it relates to the offenses under investigation.

d. The identity of the person who created or used the eBay account, including records that help reveal the whereabouts of such person.

e. The identity of any person who communicated with the eBay account about matters relating to the offenses under investigation, including records that help reveal their identities and whereabouts.

f. All records and communications with eBay and PayPal.

g. All records and communications with American Electro Optics, Morris Rodgers, Dongmei Xie, and/or others potentially familiar with American Electro Optics, Morris Rodgers, and Dongmei Xie.

h. All records and communications pertaining to the sale of night vision and thermal optic devices, including components of these devices such as image intensifier assemblies/tubes.

i. All records and communications pertaining to military supply items and equipment.

j. All financial records, including records of payments made or received.

k. All records and communications associated with the operation of a business, including those that identify goods or services for sale or sold.